

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

FILED
1st JUDICIAL DISTRICT COURT
Santa Fe County
7/26/2019 12:04 PM
STEPHEN T. PACHECO
CLERK OF THE COURT
Leah Martinez

MULTICULTURAL ALLIANCE FOR A SAFE
ENVIRONMENT and AMIGOS BRAVOS,

Appellants,

vs.

No. D-101-CV-2018-02492

NEW MEXICO MINING COMMISSION,

Appellee,

and

MINING AND MINERALS DIVISION OF
THE ENERGY, MINERALS AND NATURAL
RESOURCES DEPARTMENT and RIO GRANDE
RESOURCES, LLC,

Intervenors.

**DECISION AFFIRMING DECISION AND ORDER OF
THE NEW MEXICO MINING COMMISSION DATED JULY 27, 2018**

THIS MATTER came before the Court on the Appeal of the New Mexico Mining Commission's July 27, 2018 Decision and Order in In the Matter of Rio Grande Resources Corporation's Permit Revision to Permit No. C1002RE, Petition 1801, pursuant to Rule 1-074, NMRA; Multicultural Alliance for a Safe Environment and Amigos Bravos ("Appellants") being represented by the New Mexico Environmental Law Center (Eric Jantz, Esq., Douglas Meiklejohn, Esq., Jaimie Park, Esq., and Jonathan Block, Esq.), the New Mexico Mining Commission ("Appellee") being represented by Hector H. Balderas, New Mexico Attorney General, by Assistant Attorneys General John Grubestic, Esq., and Sally Malave, Esq., Intervenor Mining and Minerals Division of the Energy, Minerals and Natural Resources Department, being represented by Special Assistant Attorneys General William R.

Brancard, Esq., Cheryl L. Bada, Esq., and Dana David, Esq., and Intervenor Rio Grande Resources Corporation being represented by Modrall, Sperling, Roehl, Harris & Sisk, P.A. (Stuart R. Butzier, Esq. and Christina C. Sheehan, Esq.); the Court having determined that oral arguments of counsel are not necessary and having reviewed the pleadings and all matters of record and being fully advised in the premises, finds that the New Mexico Mining Commission's July 27, 2018 Decision and Order in In the Matter of Rio Grande Resources Corporation's Permit Revision to Permit No. C1002RE, Petition 1801 (the "Decision"), should be affirmed.

Based upon the pleadings and all matters of record, this Court finds:

1. This Court has jurisdiction over the parties hereto and the subject matter hereof.
2. This review is governed by Rule 1-074, NMRA.
3. The Decision appealed from is not arbitrary or capricious and is otherwise in accordance with law.
4. The Decision appealed from is supported by substantial evidence.
5. The Decision is not improper rulemaking.
6. The Decision prohibiting economic evidence was not arbitrary or capricious.
7. The Court cannot reverse a Decision because it may disagree with the result.

Such a ruling "is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record." *Id.* ¶ 17 (internal quotation marks and citation omitted). Though we must perform a whole record review, "[w]e must be careful not to substitute our own judgment for that of the agency" *Id.* Rather, "we must consider all evidence bearing on the findings, favorable or unfavorable, to determine if there is substantial evidence to support the result." *Tom Grownney Equip. Co. v. Jouett*, 2005-NMSC-015, ¶ 13, 137 N.M. 497, 113 P.3d 320 (internal quotation marks and citation omitted). "Where the testimony is conflicting, the issue on appeal is not whether there is evidence to support a contrary result, but rather whether the evidence supports the findings of the trier of fact." *Id.* (internal quotation marks and citation omitted).

Sais v. NM Dept. of Corrections, 2012-NMSC-009, ¶16, 275 P.3d 104.

8. In resolving ambiguities in a statute or regulation which an agency is charged with administering, the Court will generally defer to the agency's interpretation if it implicates agency expertise.

... A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record. *Snyder Ranches, Inc. v. Oil Conservation Comm'n*, 110 N.M. 637, 639, 798 P.2d 587, 589 (1990); see *Hobbs Gas Co. v. N.M. Serv. Comm'n*, 115 N.M. 678, 680, 858 P.2d 54, 56 (1993) (stating that burden on review of administrative decision under arbitrary and capricious standard is to show that the decision is "unreasonable or unlawful.") In making these determinations, we must remain mindful that "in resolving ambiguities in the statute or regulations which an agency is charged with administering, the Court generally will defer to the agency's interpretation if it implicates agency expertise." *Atlixco*, 1998-NMCA-134, ¶ 30, 125 N.M. 786, 965 P.2d 370; see *Chavez*, 1996-NMSC-070, ¶ 21, 122 N.M. 579, 929 P.2d 971. Further, "[t]raditionally, cases have uniformly held the hearing of an administrative appeal at the district court level is an appellate procedure, not a trial de novo." *Groendyke Transp., Inc. v. N.M. State Corp. Comm'n*, 101 N.M. 470, 476, 684 P.2d 1135, 1141 (1984) (emphasis added).

Rio Grande Chapter of the Sierra Club v. New Mexico Mining Commission,

2003-NMSC-005, ¶17, 133 N.M. 97, 61 P.3d 806.

9. A court must exercise caution in applying the plain meaning rule.

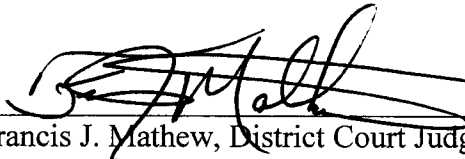
"Its beguiling simplicity may mask a host of reasons why a statute, apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (i.e., nonfrivolous) differences of opinion concerning the statute's meaning." *State ex rel. Helman*, 117 N.M. at 353, 871 P.2d at 1359. The plain meaning rule "must yield on occasion to an intention otherwise discerned in terms of equity, legislative history, or other sources." *Sims v. Sims*, 1996-NMSC-078, ¶ 21, 122 N.M. 618, 930 P.2d 153 (internal quotation marks and quoted authority omitted). Our task is to determine how the original drafters would have applied these amendments to the existing statute.

State v. Smith, 2004-NMSC-032, ¶ 9, 136 N.M. 372, 98 P.3d 1022.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that

New Mexico Mining Commission's July 27, 2018 Decision and Order in In the Matter of Rio

Grande Resources Corporation's Permit Revision to Permit No. C1002RE, Petition 1801, is
AFFIRMED.


Francis J. Mathew, District Court Judge

xc: Counsel, e-served.